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TAGS: TSPA, ETTC, CH, KS, BEXP

SUBJECT: U.S. RESTRICTIONS ON FOREIGN LAUNCHES OF U.S. SATELLITES

REF: SEOU 546

1. REFTEL REQUESTED TEXTS OF PERTINENT REGULATIONS AND CLARIFICATION OF U.S. POLICY AND REGULATIONS REGARDING RESTRICTION ON EXPORTS OF U.S.-BUILT SATELLITES TO PRC AND FORMER USSR. REFTEL ALSO STATES KOREA TELECOM REQUIRES THESE REGULATIONS IN ORDER TO "TURN DOWN THE SOVIET AND CHINESE BIDS."

RESTRICTIONS ON SOVIET LAUNCHES

2. APPLICABLE PORTIONS OF THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) (22 CFR 120-138) STATE: "SECTION 126.1 PROHIBITED EXPORTS NO SALES TO CERTAIN COUNTRIES. (U) GENERAL. IT IS THE POLICY OF THE UNITED STATES TO DENY LICENSES AND OTHER APPROVALS WITH RESPECT TO DEFENSE ARTICLES AND DEFENSE SERVICES DESTINED FOR OR

ORIGINATING IN CERTAIN COUNTRIES OR AREAS. THIS POLICY ALSO APPLIES TO EXPORTS TO AND IMPORTS FROM THESE COUNTRIES OR AREAS. THIS POLICY APPLIES TO ALBANIA, BULGARIA, CUBA, ESTONIA, CAMBODIA, LATVIA, LITHUANIA, NORTH KOREA, OUTER MONGOLIA, ROMANIA, THE SOVIET UNION AND VIETNAM." FYI: WE ARE CURRENTLY AMENDING THE ITAR TO LIST THE INDIVIDUAL REPUBLICS OF THE FORMER SOVIET UNION AS PROHIBITED DESTINATIONS. END FYI.

3. MOST U.S. MANUFACTURED SPACE COMMODITIES, INCLUDING ALL SATELLITES AND COMPONENTS SPECIFICALLY DESIGNED FOR SATELLITES, ARE CURRENTLY CONTROLLED ON THE U.S.

MUNITIONS LIST (SECTION 121.1 OF THE ITAR). AS SUCH, THEY ARE CONSIDERED DEFENSE ARTICLES AND SUBJECT TO THE RESTRICTIONS OF SECTION 126.1 OF THE ITAR. FYI: EXCEPTIONS TO THE POLICY STATED IN SECTION 126.1 MAY BE MADE AT THE DISCRETION OF THE DIRECTOR OF THE OFFICE OF DEFENSE TRADE CONTROLS, ALTHOUGH EXCEPTIONS ARE RARELY

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MADE. GIVEN THE DRAMATIC CHANGES THAT HAVE TRANSPIRED IN THE FORMER SOVIET UNION, MANY ELEMENTS OF OUR NATIONAL SECURITY AND FOREIGN POLICY ARE UNDER REVIEW. HOWEVER, IT IS UNLIKELY THERE WILL BE ANY SUBSTANTIAL CHANGES TO OUR EXPORT CONTROL POLICY BEFORE THE KOREANS PLAN TO SELECT A LAUNCH PROVIDER FOR KOREASAT. END FYI. BOTTOM LINE: UNDER CURRENT USC POLICY AS PROVIDED IN THE ITAR, EXPORTS OF U.S. BUILT SATELLITES FOR LAUNCH IN THE FORMER SOVIET UNION ARE ALMOST CERTAINLY TO BE DENIED.

4. GUIDANCE CONCERNING LAUNCHES OF U.S. BUILT SATELLITES FROM THE PRC IS MORE COMPLEX. AS DESCRIBED BELOW, BOTH CONGRESS AND THE PRESIDENT HAVE IMPOSED RESTRICTIONS ON EXPORTS OF U.S.-BUILT SATELLITES TO THE PRC. BOTTOM LINE: UNTIL PRC AGREEMENT TO OBSERVE THE MTCR GUIDELINES AND PARAMETERS IS FINALIZED, EXECUTIVE-BRANCH IMPOSED SANCTIONS CURRENTLY IN PLACE THAT PROHIBIT THE EXPORT OF U.S. BUILT SATELLITES TO THE PRC ARE NOT LIKELY TO BE LIFTED. EVEN IF THESE SANCTIONS ARE LIFTED, THERE ARE STILL ADDITIONAL LEGISLATIVE RESTRICTIONS AND PRESIDENTIAL WAIVERS REQUIRED BEFORE U.S. EXPORT LICENSES FOR SATELLITES COULD BE APPROVED.

LAUNCH SERVICES MOA

5. THE U.S. AND CHINA CONCLUDED A SERIES OF AGREEMENTS IN LATE 1988 AND EARLY 1989 TO COVERING TECHNICAL SAFEGUARDS, LIABILITY AND TRADE FOR LAUNCH OF U.S. SATELLITES BY CHINESE LAUNCH VEHICLES. THE U.S.-PRC

MEMORANDUM OF AGREEMENT REGARDING INTERNATIONAL TRADE IN COMMERCIAL LAUNCH SERVICES (LAUNCH SERVICES MOA) RESTRICTS CHINESE LAUNCHES TO NINE WITHIN THE SIX-YEAR TERM OF THE AGREEMENT, LIMITS BUNCHING OF LAUNCHES TO NO MORE THAN THREE PER YEAR, AND REQUIRES CHINESE FIRMS TO "OFFER AND CONCLUDE ANY CONTRACTS TO PROVIDE COMMERCIAL LAUNCH SERVICES TO INTERNATIONAL CUSTOMERS AT PRICES, TERMS, AND CONDITIONS PREVAILING IN THE INTERNATIONAL MARKET FOR COMPARABLE COMMERCIAL LAUNCH SERVICES." THE LAUNCH SERVICES AGREEMENT ALSO INCLUDES RESTRICTIONS ON GOVERNMENT INDUCEMENTS TO SALE, SUCH AS PROVIDING PREFERENTIAL TRADE OPPORTUNITIES LINKED TO A LAUNCH CONTRACT.

6. THE AGREEMENT ALLOWS THE U.S. TO TAKE ANY ACTION PERMITTED UNDER U.S. LAWS AND REGULATIONS IF THERE IS CLEAR EVIDENCE OF A VIOLATION. UNDER U.S. IMPLEMENTING GUIDELINES, SUCH ACTION COULD TAKE THE FORM OF SECTION 301 (USTR-INITIATED) OR SECTION 302 (INDUSTRY-INITIATED) INVESTIGATIONS UNDER THE 1974 TRADE ACT. IN ADDITION, USTR ADVISES THE SECRETARY OF STATE OF THE STATUS OF THE AGREEMENT'S IMPLEMENTATION "IN ORDER THAT THIS INFORMATION MAY BE AVAILABLE TO THE SECRETARY WITH RESPECT TO EXPORT LICENSE RESPONSIBILITIES."

7. CHINA HAS WON ONLY ONE BID, FOR LAUNCH OF THE ARABSAT 1-C SATELLITE, SINCE SIGNING THE AGREEMENT. THE ARABSAT CONSORTIUM SUBSEQUENTLY WITHDREW THE AWARD OF THAT CONTRACT. CHINA'S ARABSAT BID RAISED SERIOUS QUESTIONS IN THE USG AND U.S. INDUSTRY ABOUT COMPLIANCE WITH THE LAUNCH SERVICES MOA. THE USG EXAMINED THIS MATTER BUT HAD NOT REACHED A DETERMINATION BEFORE THE CONTRACT WAS CANCELLED. MISSILE PROLIFERATION SANCTIONS IMPOSED BY THE PRESIDENT ON JUNE 16, 1991, WERE NOT TAKEN UNDER THE PROVISIONS OF THIS MOA. RESTRICTIONS ON CHINESE LAUNCHES

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FOREIGN RELATIONS AUTHORIZATION ACT

8. LICENSES FOR EXPORT TO CHINA OF ITEMS ON THE U.S. MUNITIONS LIST ARE CURRENTLY SUSPENDED UNDER LEGISLATIVE SANCTIONS IN THE FOREIGN RELATIONS AUTHORIZATION ACT, FY90 AND FY91 (PL 101-246) (FRAA), IMPOSED AFTER CHINA'S JUNE 1989 MILITARY CRACKDOWN. SATELLITE AND RELATED LAUNCH TECHNOLOGIES ARE AMONG THE ITEMS CONTAINED IN THE USML THAT ARE SUBJECT TO THESE SANCTIONS. IN ADDITION, THE FRAA SPECIFICALLY SUSPENDS EXPORTS OF U.S.-ORIGIN SATELLITES INTENDED FOR LAUNCH ON PRC-OWNED LAUNCH

VEHICLES. ABSENT CERTAIN POLITICAL CHANGES IN CHINA, PARTICULARLY IN THE AREA OF HUMAN RIGHTS, THESE SUSPENSIONS CAN ONLY BE WAIVED IF THE PRESIDENT DETERMINES THAT A PARTICULAR EXPORT IS IN THE U.S. "NATIONAL INTEREST." TO DATE, NATIONAL INTEREST WAIVERS FROM THE FRAA SUSPENSIONS HAVE BEEN GRANTED ONLY IN THE

CASES OF THE AUSSAT COMMUNICATIONS AND FREJA SCIENTIFIC SATELLITES. (A WAIVER WAS PREVIOUSLY GRANTED TO THE ASIATAT AND AUSSAT SATELLITES UNDER LEGISLATION THAT HAS SINCE EXPIRED.)

JUNE 16 MISSILE PROLIFERATION SANCTIONS

9. ON JUNE 16, 1991, THE PRESIDENT ANNOUNCED THAT HE WOULD IMPOSE CONSTRAINTS ON HIGH TECHNOLOGY TRADE WITH THE PEOPLE'S REPUBLIC OF CHINA AS A RESULT OF CHINESE MISSILE TECHNOLOGY TRANSFERS TO OTHER COUNTRIES. IN ADDITION TO LIMITING SALES OF HIGH PERFORMANCE COMPUTERS TO CHINA, THE PRESIDENT STATED THAT HE WOULD NOT WAIVE FRAA SANCTIONS PROHIBITING THE TRANSFER OF U.S. TECHNOLOGY FOR SATELLITES LAUNCHED ON CHINESE ROCKETS. HE ALSO INITIATED LEGAL PROCEDURES TO IMPOSE SANCTIONS REQUIRED PURSUANT TO THE FY 1991 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) ON TWO CHINESE COMPANIES, CHINA GREAT WALL INDUSTRY CORPORATION AND CHINA PRECISION MACHINERY IMPORT-EXPORT CORPORATION, FOR TRANSFERS TO PAKISTAN OF MISSILE-RELATED TECHNOLOGY COVERED BY THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR) ANNEX.

NATIONAL DEFENSE AUTHORIZATION ACT

10. THE COMPANY-SPECIFIC SANCTIONS, IMPOSED JUNE 25 UNDER AMENDMENTS TO THE ARMS CONTROL EXPORT ACT AND EXPORT ADMINISTRATION ACT CONTAINED IN THE NATIONAL DEFENSE AUTHORIZATION ACT, FY91 (PL 101-510), REQUIRE THE USC TO DENY LICENSE APPLICATIONS TO EXPORT ITEMS COVERED BY THE MTCR ANNEX FOR TWO YEARS AND DENY USC

CONTRACTS RELATING TO SUCH ITEMS. SATELLITE AND LAUNCH-RELATED ITEMS AFFECTED BY THE SANCTIONS MAY BE LISTED IN EITHER THE USML OR USDOC'S COMMODITY CONTROL LIST. THESE SANCTIONS CAN ONLY BE WAIVED "IF THE PRESIDENT DETERMINES THAT SUCH WAIVER IS ESSENTIAL TO THE NATIONAL SECURITY OF THE UNITED STATES."

11. AN AMENDMENT TO THE NDAA MISSILE PROLIFERATION SANCTIONS, CONTAINED IN THE FOREIGN RELATIONS AUTHORIZATION ACT, FY92 AND FY93 (PL 102-138), LIMITS FLEXIBILITY IN IMPOSING ANY FUTURE SANCTIONS IN THE EVENT OF NEW CHINESE MISSILE-RELATED TRANSFERS. ANY SUCH SANCTIONS COULD NO LONGER BE IMPOSED AGAINST INDIVIDUAL CHINESE ENTITIES ONLY, BUT WOULD HAVE TO BE IMPOSED AGAINST ALL CHINESE GOVERNMENT ACTIVITIES RELATED TO MISSILE EQUIPMENT AND TECHNOLOGY AND TO DEVELOPMENT OR PRODUCTION OF ELECTRONICS, SPACE SYSTEMS OR EQUIPMENT, AND MILITARY AIRCRAFT. THESE EXPANDED

SANCTIONS ON U.S. EXPORTS TO CHINA WOULD AFFECT ONLY U.S. MUNITIONS LIST ITEMS. HOWEVER, SANCTIONS ON IMPORTS INTO THE U.S. FROM CHINA (REQUIRED IF A TRANSFER SUBSTANTIALLY CONTRIBUTES TO MISSILE DEVELOPMENT IN A NON-MTCR COUNTRY) WOULD APPLY TO ALL THE ABOVE FIELDS. THE AMENDMENT DOES NOT AFFECT THE SANCTIONS WAIVER PROVISIONS.

COMMERCE/JUSTICE/STATE APPROPRIATIONS ACT

12. THE 1992 COMMERCE/JUSTICE/STATE APPROPRIATIONS ACT (CJSA) (PL 102-140) DENIES THE USE OF FUNDS TO REINSTATE OR APPROVE ANY EXPORT LICENSE APPLICATIONS FOR THE

LAUNCH OF U.S.-BUILT SATELLITES ON CHINESE-BUILT LAUNCH VEHICLES. THE PROHIBITION MAY BE WAIVED BY THE PRESIDENT IN THE NATIONAL INTEREST OR, ON A CASE-BY-CASE BASIS, UPON CERTIFICATION BY THE USTR THAT CHINA IS IN FULL COMPLIANCE WITH THE 1989 LAUNCH SERVICES MOA. SINCE THIS PROVISION WOULD ALLOW THE PRESIDENT TO CONTINUE GRANTING NATIONAL INTEREST WAIVERS FOR SATELLITE EXPORTS IF HE CHOOSES TO DO SO, IT DOES NOT SUBSTANTIALLY ALTER EXISTING SANCTIONS OR WAIVER REQUIREMENTS.

ADDITIONAL LEGISLATION UNDER CONSIDERATION

13. CONGRESS IS NOW CONSIDERING PROPOSALS TO APPLY FURTHER SANCTIONS ON EXPORTS OF U.S. SATELLITES FOR LAUNCH FROM CHINA IN THE OMNIBUS EXPORT AMENDMENTS ACT (EOA) PASSED BY THE SENATE AS S. 320 AND BY THE HOUSE AS H.R. 3489. THE SENATE VERSION WOULD PROHIBIT U.S. SATELLITE EXPORTS FOR LAUNCH FOR PRC-OWNED ROCKETS UNLESS THE USTR CERTIFIES THAT CHINA IS IN FULL COMPLIANCE WITH THE LAUNCH SERVICES MOA. (THIS DIFFERS FROM THE CJS PROVISION IN THAT IT WOULD REQUIRE A USTR CERTIFICATION IN ADDITION TO AN FRAA NATIONAL INTEREST WAIVER.) THE HOUSE VERSION WOULD BAN EXPORT OF U.S.-ORIGIN SATELLITES FOR LAUNCH FROM A PRC-OWNED LAUNCH VEHICLE, WITHOUT ANY WAIVER PROVISION. WE ARE NOT ABLE AT THIS TIME TO PREDICT WHICH OF THESE VERSIONS IS LIKELY TO SURVIVE A CONFERENCE BETWEEN THE HOUSES. THE ADMINISTRATION HAS RAISED SERIOUS OBJECTIONS TO SEVERAL PROVISIONS IN THE EOA WHICH, IF NOT REMEDIED,

COULD LEAD TO A VETO BY THE PRESIDENT.

STATUS OF SATELLITE SANCTIONS

14. DURING SECRETARY BAKER'S NOVEMBER 1991 VISIT TO BEIJING, THE CHINESE GOVERNMENT SAID THAT IT INTENDED TO OBSERVE THE MTCR GUIDELINES AND PARAMETERS IF THE U.S. REMOVED THE MISSILE PROLIFERATION SANCTIONS IMPOSED JUNE 16. ONCE THIS AGREEMENT IS FINALIZED, THE U.S. IS WILLING TO LIFT THE SANCTIONS IMPOSED ON JUNE 16. IF THE PROLIFERATION SANCTIONS ARE LIFTED, THE U.S. WOULD RESUME CASE-BY-CASE REVIEW OF APPLICATIONS FOR SATELLITE EXPORTS FOR LAUNCH FROM CHINESE ROCKETS. SUCH EXPORTS WOULD REMAIN SUBJECT TO EXISTING LEGAL RESTRICTIONS. I.E., FRAA NATIONAL INTEREST WAIVERS WOULD STILL BE NECESSARY, FURTHER NDAA SANCTIONS COULD BE IMPOSED IF CHINA ENGAGES IN SANCTIONABLE MISSILE TECHNOLOGY TRANSFERS, AS WELL AS ADDITIONAL POSSIBLE NEW REQUIREMENTS IMPOSED BY LAW (E.G., USTR CERTIFICATION) MIGHT NEED TO BE MET. BAKER

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